

6836

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CERTIFIED TRUE COPY

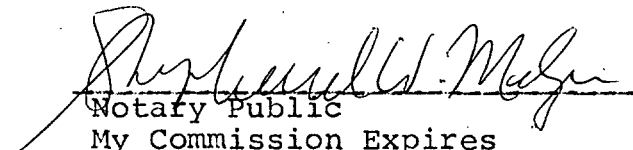
INTERSTATE COMMERCE COMMISSION

CERTIFICATE OF NOTARY PUBLIC

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I certify that on December 18, 1972 I
compared this copy with the original document
and that it is a true and correct copy in all
respects.

[seal]


Notary Public
My Commission Expires

SHEPHARD W. MELZER
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-7893875
Qualified in Nassau County
Cert. Filed in New York County
Term Expires March 30, 1974

6836

RECORDATION NO. _____ Filed & Recorded

Security Agreement

DEC 20 1972 -9 45 AM

INTERSTATE COMMERCE COMMISSION

Dated as of December 1, 1972

BETWEEN

THIRD NATIONAL BANK IN NASHVILLE

Debtor,

AND

NATIONAL BANK OF NORTH AMERICA

Bank.

VERT-A-PAC SUPERSTRUCTURES

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on
at, Recordation No.

SECURITY AGREEMENT

EQUIPMENT

THIS SECURITY AGREEMENT dated as of December 1, 1972, from THIRD NATIONAL BANK IN NASHVILLE (the "Debtor"), to NATIONAL BANK OF NORTH AMERICA (the "Bank"),

WITNESSETH:

WHEREAS, the Debtor has entered into a Finance Agreement dated as of December 1, 1972 ("Finance Agreement", the defined terms therein being used herein with the same meaning, unless otherwise defined herein) with the Bank; and

WHEREAS, the Bank has agreed on the terms and conditions set forth in the Finance Agreement to make Loans to the Debtor, the proceeds of which are to be used by the Debtor to finance Equipment;

Now, THEREFORE, in consideration of the premises and in order to secure the prompt payment of the principal of and interest on the Note (whether now or hereafter outstanding) and of all other moneys payable and to be payable under the Finance Agreement, the Lease Assignment and hereunder (collectively the "Indebtedness") and the timely and faithful performance and observance by the Debtor of all of the agreements, covenants, and provisions contained in each of the aforesaid agreements, the Debtor has granted, conveyed, pledged, sold, mortgaged, assigned, transferred, set over and granted a security interest, and does hereby grant, convey, pledge, sell, mortgage, assign, transfer, set over and grant a security interest unto the Bank in (i) the units of Equipment described in Attachment No. 1 annexed hereto; (ii) the Debtor's interest in all Equipment, substitute equipment, accessories and replacement and added parts which may now or hereafter be placed on or installed in any of the Equipment described in item (i) above (all such Equipment, accessories and replacement and added parts described in items (i) and (ii) above being hereinafter sometimes collectively called the "Security Equipment"); (iii) all proceeds (including, without limitation, insurance and indemnity payments) from the sale, loss, or other disposition of the Equipment; (iv) all rights of Debtor under the Lease which have been assigned to Bank

under the Lease Assignment including without limitation the rights to receive and collect all rentals, profits and other sums payable to Debtor as Lessor under the Lease, and (v) all rights, claims, and causes of action, if any, which the Debtor may have against any manufacturer of Equipment or any other party, by contract or otherwise, in respect of any defect in the Equipment (such Equipment, proceeds, and rights, claims, chattel paper and causes of action described in items (i) through (v) above being hereinafter sometimes collectively called the "Collateral"),

TO HAVE AND TO HOLD all and every part of the Collateral unto the Bank, and its successors and assigns, for its and their own use and benefit forever;

PROVIDED, HOWEVER, and these presents are on the condition that, if the Debtor, or its successors or assigns, shall pay or cause to be paid to the Bank all of the Indebtedness in accordance with its terms, as provided in the Finance Agreement, in the Notes, in the Lease Assignment, and herein, and shall well and faithfully perform and observe all of the agreements, covenants, and provisions hereof and thereof at the time and in the manner specified, then this Agreement and rights and powers granted herein and hereby shall cease to be binding and shall be of no further force and effect, *otherwise* the same shall be and remain in full force and effect; and

PROVIDED FURTHER, that, subject to the terms and provisions hereof and unless otherwise stated herein, the Debtor may retain possession, use, and enjoyment of the Collateral as long as, but only as long as, no Event of Default shall have occurred and be continuing.

SECTION 1. Anything herein contained to the contrary notwithstanding, all Equipment which may be financed by the Debtor after the date hereof, and which shall be required by the Finance Agreement to be subject to this Agreement, shall, immediately upon the consummation of such financing and without further act of conveyance or mortgage by the Debtor, become and be subjected to the security interest created in the above item (i) of the granting clause, as fully and effectively as if the Debtor were now the owner of such Equipment.

SECTION 2. The Debtor hereby constitutes the Bank, and its successors and assigns, the true and lawful attorney of the Debtor, irrevocably and with full power of substitution, in the name of the Debtor

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or otherwise to demand, receive, compromise, sue for, and give acquittance for any and all moneys and claims for money due and to become due under or arising out of this Agreement, to endorse any checks or other instruments or orders in connection therewith, and to file any claims or take any actions or institute any proceedings with respect thereto which to the Bank may seem necessary or advisable in its sole and complete discretion. Anything herein contained to the contrary notwithstanding, neither the Bank nor its nominee or assignee shall have any obligation or liability by reason of or arising out of this Agreement to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time or times by virtue of this Agreement.

SECTION 3. The Debtor shall, from time to time and at its own expense promptly execute, acknowledge, witness, and deliver, and file and/or record, or procure the execution, acknowledgment, witnessing, and delivery, and the filing and/or recordation of, such documents or instruments, and shall take or cause to be taken such other actions, as the Bank may reasonably request for the perfection against the Debtor and all third parties whomsoever (subject to the rights created by the Lease relating to the Security Equipment) of the security interest created by this Agreement and for the continuation and protection thereof and promptly give to the Bank evidence satisfactory to the Bank of such filing and recording. Without limiting the generality of the foregoing, the Debtor shall execute, acknowledge, witness, and deliver such financing and continuation statements, notices, and additional security agreements, make such notations on its records, affix or cause to be affixed such labels, plates, or other markings on the Security Equipment, and take such other action as the Bank may reasonably request for the purpose of so perfecting, maintaining, and protecting such security interest of the Bank, and shall cause this Security Agreement, any Security Agreement Supplement and each such financing and continuation statement, notice, and additional security agreements to be filed or recorded in such manner and in such places as may be required by applicable law and as the Bank may reasonably request for such purpose.

SECTION 4. The Debtor hereby represents and warrants that the Debtor owns, on the date hereof, or will hereafter acquire, the Security Equipment described in Attachment No. 1 hereto free and clear of all liens, charges and encumbrances of any nature whatsoever, except for the security interest created hereby and the rights of the Lessee under the Lease which has been assigned to the Bank pursuant to the Lease Assignment, and shall continue to so hold the same, except as otherwise specifically permitted herein.

SECTION 5. To the extent that the Debtor can grant such right, the Bank shall at all times have the right to enter into and upon any premises wherein any of the Security Equipment may be situated for the purpose of locating and inspecting the same, observing its use, and/or otherwise protecting the security interest created herein.

SECTION 6. The Bank may, at any time and from time to time, at its option, perform any act which is undertaken by the Debtor to be performed by the Debtor hereunder, but which the Debtor shall fail to perform, and may take any other action which the Bank may deem necessary for the maintenance, preservation, or protection of its security interest in the Collateral, or of any lease thereof approved by the Bank pursuant to the Finance Agreement or the Lease Assignment of any rental payment or other moneys due thereunder. All moneys advanced by the Bank in connection with any of the foregoing, together with interest at the rate of 10% per annum, or the maximum lesser rate permitted under applicable law, shall be repaid by the Debtor to the Bank, upon demand, and shall be secured hereby as provided in Section 1 hereof. The making of such advance by the Bank shall not, however, relieve the Debtor of liability for any default hereunder until the full amount of all such moneys so advanced and such interest thereon shall have been repaid by the Debtor to the Bank and such default shall have otherwise been cured.

SECTION 7. No unit of Security Equipment shall be moved from or transferred to any location not specified for such unit in Attachment No. 1 annexed hereto without the prior written consent of the Bank and any such removal shall be permitted only if all action required by Section 3 hereof shall have been taken with respect to such unit and the Lease thereof and the rental payments and other moneys due thereunder, in the jurisdiction to which such unit is to be removed.

SECTION 8. The Debtor shall not, without the prior written consent of the Bank:

(a) permit any of the Collateral to be levied upon under legal process or to fall under any other lien or encumbrance of whatever nature, except the rights of lessee under the Lease, to the extent any such levy, process, lien or encumbrance shall result from Debtor's acts or matters under Debtor's control;

(b) cause or permit anything to be done which may impair the value of the Collateral or the security interest therein intended to be granted hereby to the extent any such action or thing shall result from Debtor's acts or matters under Debtor's control; or

(c) sell, assign (including by virtue of assignments by operation of law), mortgage, pledge, or otherwise transfer or encumber any of the Collateral (except as contemplated in the Finance Agreement), or suffer or permit any party other than the Bank to perfect any security interest in the Collateral, whether for purchase money or otherwise.

SECTION 9. (a) Upon the occurrence and during the continuance of any default under this Agreement, the Finance Agreement or the occurrence of an Event of Default (as defined in the Lease) but subject always to any mandatory requirements of applicable law then in effect and such other rights of Lessee under the Lease, the Bank may, at its option, do any one or more or all of the following acts, as the Bank in its sole and complete discretion may then elect:

(i) exercise all the rights and remedies in foreclosure and otherwise granted to mortgagees and secured parties under the provisions of applicable law;

(ii) exercise all rights and remedies of Lessor under the Lease;

(iii) institute legal proceedings for the specific performance of any covenant or agreement herein undertaken by the Debtor, or for aid in the execution of any power or remedy herein granted;

(iv) institute legal proceedings to foreclose upon and against the security interest granted in and by this Agreement, to recover

judgment for all amounts then due and owing as Indebtedness, and to collect the same only out of any of the Collateral;

(v) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any of the Collateral;

(vi) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure hereunder or the sale of any of the Collateral under the order of a court of competent jurisdiction or under other legal process;

(vii) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be situated, and take possession of all or any part thereof or render it unusable; and, without being responsible for loss or damage, hold, store, and keep idle, or operate, lease, or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as the Bank may deem to be in its own best interest, and demand, collect, and retain all hire, earnings and all other sums due and to become due in respect of the same from any party whomsoever, accounting only for net earnings arising from such use, if any, after charging against all receipts from the use of the same and from any subsequent sale thereof, by court proceedings or pursuant to subsection (viii) of this Section 9, all costs and expenses of, and damages or losses by reason of, such use and/or sale; or

(viii) personally, or by agents or attorneys, enter upon and into any place wherein the same may then be located, and take possession of any part or all of the Collateral, with or without process of law and without being responsible for loss or damage, and sell or dispose of all or any part of the same, free from any and all claims of the Debtor or of any other party claiming by, through, or under the Debtor at law, in equity, or otherwise, at one or more public or private sales, in such place or places, at such time or times, and upon such terms as the Bank may determine, in its sole and complete discretion and in light of its own best interests, with or without any previous demand on or notice to the Debtor or advertisement of any such sale or other disposal; and for the

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aforesaid purposes, all notice of sale, advertisement, and demand and any right or equity of redemption otherwise required by, or available to the Debtor under, applicable law are hereby waived by the Debtor to the fullest extent permitted by applicable law. The power of sale hereunder shall not be exhausted by one or more sales, and the Bank may from time to time adjourn any sale to be made pursuant to this Section 9.

(b) In the event that any mandatory requirement of applicable law shall obligate the Bank to give prior notice to the Debtor of any of the foregoing acts, the Debtor hereby covenants and agrees that a notice sent to it in writing by certified U. S. mail, return receipt requested, at least ten (or such longer period as may be required by applicable law) business days before the date of any such act, at Third National Bank Building, Nashville, Tenn. 37219, shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time and place of any public sale hereunder and reasonable notification of the time after which any private sale or other intended disposition to be made hereunder is to be made.

(c) The proceeds from the sale of the Collateral pursuant to any of the provisions of this Section 9 shall be applied as provided in Section 6 of the Finance Agreement.

SECTION 10. To the fullest extent that it may lawfully so agree, the Debtor shall not at any time insist upon, claim, plead, or take any benefit or advantage of any appraisement, valuation, stay, extension, moratorium, redemption, or any similar law now or hereafter in force in order to prevent, delay, or hinder the enforcement of this Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to Section 9 above; and the Debtor, for itself and all who may claim through it, as far as it or they now or hereafter lawfully may do so hereby waives the benefit of all such laws, and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose this Agreement may order the sale of the Collateral as an entirety.

SECTION 11. At any sale pursuant to Section 9 hereof, the Bank or its agent may to the extent permitted by applicable law bid for and purchase the Collateral offered for sale, may make payment on account thereof as hereinafter in this Section 11 provided, and, upon compliance in full with the terms of such sale, may hold, retain, and dispose of such property without further accountability therefor to the Debtor or any other party. In any such sale to the Bank, the Bank may, for the purpose of making payment for the Collateral or any part thereof so purchased, use any claim for Indebtedness then due and payable to it, as a credit against the purchase price.

SECTION 12. The Bank makes no representations or warranties with respect to the Collateral or any part thereof, and the Bank shall not be chargeable with any obligations or liabilities of the Debtor with respect thereto. The Debtor shall settle any and all claims with respect to the Collateral, and the Bank shall have no liability or obligation arising out of any such claims.

SECTION 13. (a) Without in any manner, or to any extent or degree qualifying its obligations under Section 3 hereof, at any time and from time to time, upon the written request of the Bank and at the sole expense of the Debtor, the Debtor shall promptly and duly execute, acknowledge, witness and deliver any and all such further instruments and documents, and take such further actions, as the Bank may reasonably request, to obtain for the Bank the full benefits of this Agreement and of the rights and powers herein granted. The Debtor hereby authorizes the Bank to effect any filing or recording which the Bank has requested pursuant to Section 3 hereof without the signature of the Debtor, to the extent permitted by applicable law. The costs and expenses of the Bank with respect to such actions shall be payable by the Debtor on demand.

(b) The Debtor hereby further represents and warrants that it has not, and covenants that it shall not, as long as this Agreement shall remain in effect, except with the prior written consent of the Bank and upon the terms and conditions, if any, specified in such consent, enter into any agreement amending or supplementing any purchase agreement with respect to Security Equipment which would affect the rights

assigned by item (iv) of the granting clause or which would have the effect of settling or compromising any such rights.

SECTION 14. Each right, power, and remedy herein specifically granted to the Bank or otherwise available to it shall be cumulative, and shall be in addition to every other right, power, and remedy herein specifically given or now or hereafter existing at law, in equity, or otherwise; and each right, power, and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time, as often and in such order as may be deemed expedient by the Bank in its sole and complete discretion; and the exercise or commencement of exercise of any right, power, or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power, or remedy. No delay or omission by the Bank in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power, or remedy or be construed to be a waiver of any default on the part of the Debtor or an acquiescence therein. No waiver by the Bank of any breach or default of or by the Debtor under this Agreement shall be deemed to be a waiver of any other or similar, previous, or subsequent breach or default.

SECTION 15. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Bank, and their respective successors and assigns, except that the Debtor may not assign or transfer its rights hereunder without the prior written consent of the Bank.

SECTION 16. Except as otherwise required by the laws of any jurisdiction in which any Collateral is located, this Agreement shall be construed and interpreted in accordance with the laws of the State of New York applicable to agreements made and wholly performed in that state, and any provisions hereof not so complying shall be deemed to be modified accordingly in the manner and to the extent which shall best effect the intentions and purposes reflected in and contemplated by this Agreement.

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IN WITNESS WHEREOF, the Debtor has by its indicated officer there-
unto duly authorized, executed and delivered this Security Agreement
on the day and year first above written.

THIRD NATIONAL BANK IN NASHVILLE

By 
Vice President

The foregoing Security Agreement
is hereby accepted:

NATIONAL BANK OF NORTH AMERICA

By 
Vice President

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**ATTACHMENT NO. 1
to Security Agreement**

Manufacturer's Name	Equipment Type	Name of Lessee	Location of Equipment
Whitehead & Kales Co.	13 Vert-A-Pac Superstructures	Chicago, Rock Island and Pacific Railroad Company	To be affixed on flat cars leased by Trailer Train Company from The Fifth Third Bank, Trustee, Car Nos. TTV-X 802151, TTV-X 802160- TTV-X 802163, TTV-X 802175, TTV-X 802180, TTV-X 802190, TTV-X 802191, TTV-X 802195- TTV-X 802198

STATE OF TENNESSEE }
COUNTY OF DAVIDSON } SS.:

On this 12th day of December, 1972 before me personally appeared H. A. Crowl, Jr., to me personally known, who being by me duly sworn, says that he is the Vice Pres. of THIRD NATIONAL BANK IN NASHVILLE, the national banking association described in and which executed the foregoing instrument, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[seal]

Dorothy E. Owen
Notary Public

My commission expires: 2-14-73

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 18th day of December, 1972 before me personally appeared William H. Rockaford, to me personally known, who being by me duly sworn, says that he is the a Vice President of NATIONAL BANK OF NORTH AMERICA, the national banking association described in and which executed the foregoing instrument, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[seal]

Shepherd W. Melzer
Notary Public

My commission expires:

SHEPHARD W. MELZER
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-7893875
Qualified in Nassau County
Cert. Filed in New York County
Term Expires March 30, 1974